

INVASION OF PERSONAL PRIVACY

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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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MAY 06 2007

[Redacted]

FILE:

[Redacted]

Office: BALTIMORE, MD

Date:

IN RE: Petitioner:

Beneficiary:

[Redacted]

Petitioner: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland denied the petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant filed the Form I-600A, Application for Advance Processing of an Orphan Petition (I-600A application) on November 17, 2003. The applicant is a forty-year-old married citizen of the United States. The beneficiary was born in Ghana on July 16, 2003, and she is presently one-year-old.

The district director found that the applicant's spouse did not qualify as a "prospective adoptive parent", as set forth in Title 8, Code of Federal Regulations (8 C.F.R.), section 204.3(b), because he resides in the United States without a lawful immigration status. The application was denied accordingly.

On appeal, the applicant concedes that her husband resides in the U.S. without a lawful immigration status. The applicant asserts, however, that she has filed an immigration appeal in her husband's case and that she believes his immigration status will become lawful soon.

8 C.F.R. § 204.3(b) provides in pertinent part that:

Prospective adoptive parents means a married United States citizen of any age and his or her spouse of any age, or an unmarried United States citizen who is at least 24 years old at the time he or she files the advanced processing application and at least 25 years old at the time he or she files the orphan petition. *The spouse of the United States citizen may be a citizen or an alien. An alien spouse must be in lawful immigration status if residing in the United States.*

8 C.F.R. § 245.1(d) defines the term, "lawful immigration status" by stating that:

(1) [F]or [adjustment of status] purposes of section 245(c)(2) of the Act, the term "lawful immigration status" will only describe the immigration status of an individual who is:

- (i) In lawful permanent resident status;
- (ii) An alien admitted to the United States in nonimmigrant status as defined in section 101(a)(15) of the Act, whose initial period of admission has not expired or whose nonimmigrant status has been extended in accordance with part 214 of this chapter.
- (iii) In refugee status under section 207 of the Act, such status not having been revoked;
- (iv) In asylee status under section 208 of the Act, such status not having been revoked;
- (v) In parole status which has not expired, been revoked or terminated;
or
- (v) Eligible for the benefits of Public Law 101-238 (the Immigration

Nursing Relief Act of 1989) and files an application for adjustment of status on or before October 17, 1991.

The record reflects that the applicant married [REDACTED] on July 24, 2000, and that she resides with her husband in Burtonsville, Maryland. The record reflects further that the applicant applied for adjustment of her husband's immigration status approximately three years ago. [REDACTED] was found to be inadmissible, however, and his adjustment of status application has not been approved. The AAO notes that the filing of an appeal in her husband's case does not accord lawful immigration status to the petitioner's husband. Moreover, the record contains no evidence to establish that the petitioner's husband meets the other definitional terms of "lawful immigration status" as discussed above.

In visa petition proceedings, the burden of proof rests solely with the petitioner. See section 291 of the Act, 8 U.S.C. § 1361. The applicant has failed to establish that her husband meets the "prospective adoptive parent" requirements set forth in the Act and in the regulations. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.